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'National Security' Held No Basis for Mail Checks

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Special to The New York Times

NEWARK, Nov. 29 — A Federal judge ruled today that it was unconstitutional for investigative agencies to have citizens' mail scrutinized in the name of "national security."

"National Security is too ambiguous and broad a term," Judge Lawrence A. Whipple wrote in an 18-page decision in Federal District Court here. "The memory of the lawlessness that masqueraded as 'national security' searches is too close to the memory of this court."

The judge ruled that the Federal Bureau of Investigation and other Government agencies could not have postal inspectors record the names and addresses of persons writing to organizations or individuals considered to be subversive or national-security risks.

The judge said that his ruling "in no way affects mail covers based on criminal or fugitive investigations."

Ruling Stems From Suit

The ruling came in a suit against the F.B.I. brought by Lori Paton, now 21 years old and living in Arlington, Va., who mistakenly sent a letter to the Socialist Workers Party as part of a social studies project at her high school in Mendham, N.J. The letter was intercepted, F.B.I. agents visited the school and asked questions about Miss Paton, then 15 years old, and a file on her was started. The file was destroyed when she sued.

"Invalidating a regulation on its face is strong medicine," Judge Whipple wrote. "Nevertheless, it is the only cure. National security as a basis for the mail cover is unconstitutionally vague and qualification or explanation of what is meant by national security, an investigation can be initiated on the assertions of an overzealous public official who disagrees with the unorthodox, yet constitutionaly protected political views of a group or person. It allows officials to pursue their predilictions."

Comment Withheld

A spokesman for the Department of Justice said that the agency would have to study the ruling before its impact could be assessed.

However, Robert J. Havel, deputy director of public information for the department, said that mail covers — in which records are kept of information on the outside of envelopes — were currently being used only in domestic security cases, mainly involving terrorist groups.

"We don't carry out so-called national-security investigations any more," Mr. Havel said.

He said that the department had instituted strict guidelines for use of mail covers by the F.B.I. and other agencies requesting them through the department and that mail covers could not be used for preliminary or limited investigations.

"Only in full domestic-security investigations can the mail cover be used and then only when it has been approved by the Attorney General or his designee," Mr. Havel added.

The Post Office officials said that between October 1977 and March 1978 it had 47 national-security mail covers out of a total of 1,813 covers.

In his ruling, Judge Whipple said that "while it is commendable that the F.B.I. has altered and considerably tightened their guidelines for mail covers, that investigative technique is still open to many other agencies who may not have restricted their mail-cover requests. As a result, a narrow constructionn of the regulation is an inadequate remedy."

Today's action by Judge Whipple comes on the heels of another setback to similar Government investigations. Earlier this month, a Federal Appeals Court in New York affirmed a decision requiring the government to pay $1,000 each to three persons whose mail had been opened by the Central Intelligence Agency.

That ruling could lead to the payment of many millions of dollars in damages, according to lawyers for the America Civil Liberties Union, which was also participated in the Newark case.

Frank Askin, a law professor at Rutgers University School of Law and general counsel for the A.C.L.U., said that this was the first time that a Federal judge had ruled that the less intrusive mail covers violate the First Ammendment. He said that unless the Federal Government appealed the case the decision would affect mail covers nationwide.

United Press International

Lori Paton in 1973 when she was a high school student.

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